

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 02-03**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of the Tennessee sales and use tax to cardboard shipping cartons whose primary purpose is to ensure delivery of a salable product.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time. Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[THE TAXPAYER], a manufacturer of various types of [PRODUCTS], has manufacturing plants in locations outside of Tennessee. The Taxpayer utilizes cardboard cartons to deliver its finished goods (salable products) to its distribution centers that are also located outside of Tennessee. From the distribution centers, the Taxpayer utilizes the same cardboard cartons to ship its goods to its retail customers. In addition to the primary purpose of delivering its finished goods, the cartons can, at the discretion of the

retail customer, be unfolded to serve a secondary function as a display unit. The cardboard carton/display units are non-returnable.

Products shipped in the cartons are generally [DESCRIPTION]. The Taxpayer's customers receive the cartons with containers of product inside. The customers unpack the cartons and either discard them or fold them for use as a display unit.

QUESTION

Are the cardboard shipping carton/display units exempt from tax under T.C.A. § 67-6-102(24)(E)(ii)?

RULING

Yes.

ANALYSIS

Tennessee imposes the sales tax upon "the privilege of engaging in the business of selling tangible personal property at retail in this state." T.C.A. § 67-6-202(a). A "sale at retail" means:

a taxable sale of tangible personal property or specifically taxable services to a consumer or to any person for any purpose other than for resale. . . .

Tenn. Code Ann. § 67-6-102(24)(A).

Tenn. Code Ann. § 67-6-102(24)(E), however, provides an exemption from the sales tax for certain items used for packaging tangible personal property. That statute provides, in pertinent part, as follows:

"Sale at retail," "use," "storage," and "consumption" do not include the sale, use, storage or consumption of:

(i) . . .

(ii) Materials, containers, labels, sacks, bags or bottles used for packaging tangible personal property when such property is either sold therein directly to the consumer or when such use is incidental to the sale of such property for resale; and

(iii)

Tenn. Code Ann. § 67-6-102(24)(E)(ii).

Tenn. Comp. R. & Regs. 1320-5-1-.11 (hereinafter "Rule 11" or "the Rule"), entitled "Containers, Wrapping and Packaging Materials and Related Products" interprets Tenn. Code Ann. § 67-6-102(24). The first paragraph of the regulation states:

(1) Items actually accompanying the product sold or shipped, without which the delivery of the product is impracticable on account of the character of the contents, and for which there is no separate charge, are not subject to Sales or Use Tax. These items include such things as containers, packing materials, labels or name plate affixed to products manufactured, and printed matter containing only directions for use.

Tenn. Comp. R. & Regs. 1320-5-1-.11(1).

The Rule must be read in conjunction with the statute. While the Commissioner of Revenue is authorized to prescribe reasonable rules and regulations not inconsistent with the taxing statutes under Tenn. Code Ann. § 67-1-102, such rules and regulations may not enlarge the scope of either a taxing statute or an exemption. See, *Covington Pike Toyota, Inc. v. Cardwell*, 829 S.W.2d 132, 135 (Tenn. 1992); *Volunteer Val-Pak v. Celauro*, 767 S.W.2d 635, 637 (Tenn. 1989); *Coca-Cola Bottling Co. v. Woods*, 620 S.W.2d 473, 475-76 (Tenn. 1981).

Under Tenn. Code Ann. § 67-6-102(24)(E)(ii) and Rule 11, an item will be exempt if:

- 1) it is a material , container, label, sack, bag or bottle;
- 2) it is used for packaging tangible personal property when such property is either sold therein directly to the consumer or when such use is incidental to the sale of such property for resale;
- 3) it accompanies the tangible personal property sold or shipped;
- 4) delivery of the tangible personal property is impracticable without the item on account of the character of the tangible personal property; and
- 5) there is no separate charge for the item.

The Taxpayer's cardboard cartons satisfy each of the five requirements. The first and second requirements are satisfied because the cartons are containers used to package the Taxpayer's goods and their use is incidental to the sale of the goods for resale. The third and fourth requirements are satisfied because the cartons accompany the goods that are shipped and the character of the goods are such that delivering them to the Taxpayer's customers without the cartons would be impracticable. Finally, the fifth requirement is satisfied because the Taxpayer does not make a separate charge for the cartons.

Based on the foregoing, the cardboard shipping cartons are exempt from tax under Tenn. Code Ann. § 67-6-102(24)(E)(ii).

Steven B. McCloud
Tax Counsel

APPROVED: Ruth E. Johnson
Commissioner

DATE: February 8, 2002